

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY, a Corporation,
Plaintiff in Error,

vs.

A. H. NELSON,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Southern District of California,
Southern Division.

Filed

JUL - 1 1914

F. D. Monckton,
Clerk.

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Circuit Court of Appeals
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

For Plaintiff in Error, The Atchison, Topeka and Santa Fe Railway Company, a Corporation:

E. W. CAMP, A. H. VAN COTT, U. T. CLOTFELTER, M. W. REED, and PAUL BURKS, Esq., 409 Kerckhoff Building, Los Angeles, California.

For Defendant in Error, A. H. Nelson:

Messrs. FLINT, GRAY & BARKER, 1027 Title Insurance Building, Los Angeles, California. [3*]

[Writ of Error (Original).]

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to The Honorable the Judge of the District Court of the United States for the Southern District of California, Greeting:

Because in the record of proceedings, and also in the rendition of the judgment of a plea which is in the said District Court before you, between The Atchison, Topeka and Santa Fe Railway Company, plaintiff in error, and A. H. Nelson, defendant in error, a manifest error hath happened to the great damage of the plaintiff in error, The Atchison, Topeka and Santa Fe Railway Company, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and

*Page-number appearing at foot of page of original certified Record.

full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, and then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, on the 17th day of March, next, in the Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid be inspected, the said United States Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Justice of the United States, this 17th day of February, in the year of our Lord one thousand nine hundred and [4] fourteen and of the Independence of the United States, the one hundred and thirty-eighth.

[Seal] WM. M. VAN DYKE,
Clerk of the District Court of the United States of America for the Southern District of California.

By Chas. N. Williams,
Deputy Clerk.

The above writ of error is hereby allowed.

OLIN WELLBORN,
Judge. [5]

I hereby certify that a copy of the within Writ of Error was on the 17th day of February, 1914, lodged in the Clerk's Office of the said United States Dis-

trict Court for the Southern District of California, Southern Division, for the said defendant in error.

WM. M. VAN DYKE,

Clerk United States District Court, Southern District of California.

By Chas. N. Williams,

Deputy Clerk.

[Endorsed]: Original. No. 228-Civil. Dept.
—. In the District Court of the United States, Sou. Dist. of Calif., Southern Division. A. H. Nelson, Plaintiff, vs. The Atchison, Topeka and Santa Fe Railway Company, Defendant. Writ of Error. Filed February 17, 1914, Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [6]

[Citation on Writ of Error (Original).]

UNITED STATES OF AMERICA,—ss.

To A. H. Nelson, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth District, to be held at the City of San Francisco, in the State of California, on the 17th day of March, A. D. 1914, pursuant to a writ of error on file in the Clerk's office of the District Court of the United States, for the Southern District of California, in that certain action No. 228 Civil, wherein The Atchison, Topeka and Santa Fe Railway Company is plaintiff in error, and you are defendant in error, to show cause if any there be why the judgment given, made and rendered against the said The Atchison, Topeka and Santa Fe Railway Company

in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable OLIN WELLBORN, United States District Judge, for the Southern District of California, this 19th day of February, A. D. 1914, and of the Independence of the United States, the one hundred and thirty-eighth.

OLIN WELLBORN,
U. S. District Judge for the Southern District of California. [7]

[Endorsed]: Original. No. 228-Civil. Dept.—
In the United States Circuit Court of Appeals for the Ninth Circuit. The Atchison, Topeka and Santa Fe Railway Company, Plaintiff in Error, vs. A. H. Nelson, Defendant in Error. Citation. Filed Feb. 20, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

Received copy of the within Citation this 19 day of February, 1914.

FLINT, GRAY & BARKER,
By WHEATON A. GRAY,
Attorney for Defendant in Error. [8]

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

No. 228-Civil.

A. H. NELSON,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation,
Defendant. [9]

[Summons.]

In the Superior Court of the State of California, in and for the County of San Bernardino.

A. H. NELSON,

Plaintiff,

vs.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, a Corporation,
Defendant.

Action brought in the Superior Court of the State of California, in and for the County of San Bernardino, and the Complaint filed in said County of San Bernardino, in the Office of the Clerk of said Superior Court.

The People of the State of California Send Greetings to Atchison, Topeka & Santa Fe Railway Company, a Corporation, Defendant.

YOU ARE HEREBY DIRECTED TO APPEAR and answer the Complaint in an action entitled as above, brought against you in the Superior

said plaintiff and his said wife living with said plaintiff and his said wife and under their care in the said home, to wit:

Harold A. Nelson, a son of plaintiff and his said wife, 23 years of age; Leslie S. Nelson, a son of plaintiff and his said wife, 14 years of age; Roy Nelson, a son of plaintiff and his said wife, 13 years of age; Helen Nelson, a daughter of plaintiff and his said wife, 10 years of age; Donald Nelson, a son of said plaintiff and his said wife, 8 years of age.

III.

That prior to the injuries received by plaintiff's said wife as hereinafter stated, plaintiff's said wife was at all times in excellent health, strong and able to work and did work continuously in and about the home of plaintiff and his said wife, and at all said times prior to her injury was able to and did do all the housework and cooking in said home, not only for this plaintiff and said family of children but also for the men hired by plaintiff upon the said ranch. Plaintiff's said wife also assisted him at all times prior to her said injuries in the care and management of their said children and in the conduct and management of the household affairs of said plaintiff. At the time of the injuries to plaintiff's said wife she was 46 years of age, well skilled in all kinds of housework, cooking and in the care of a home and family.

IV.

That on the 15th day of June, 1912, plaintiff purchased tickets from the ticket agent of the defendant company and there was issued to said plaintiff and

to his said wife by the defendant [13] company tickets entitling said plaintiff and his said wife to passage on the cars of said defendant from the city of San Bernardino to the city of San Jacinto; that the said plaintiff paid to the defendant for said tickets the usual, regular and customary fare; that said plaintiff thereafter, at about 4:15 P. M. of said date, with his said wife, boarded the train of said defendant standing in the railroad depot and yards of said defendant company at San Bernardino, California, and the said plaintiff and his said wife then and there, as passengers, entered one of the cars of said defendant then and there in charge of the officers, agents and employees of the said defendant company, intending and designing to ride upon said car and the train to which the same was then attached from said city of San Bernardino to said city of San Jacinto. That upon entering the car of the said defendant as aforesaid and in passing down the aisle of the car in order to obtain a seat, said plaintiff's wife, Carrie E. Nelson, violently collided with and fell over a travelling bag or other obstruction which said defendant had negligently placed and allowed to be placed in the aisle of said car. That said car, at all said times, was by said defendant negligently allowed to be and remain in a dark condition, the result of which was to render it difficult, if not impossible, for said Carrie E. Nelson or anyone else to see or observe said obstruction and traveling bag in said aisle of said car. That said Carrie E. Nelson was thereby thrown and hurled to the floor of said car; that said plaintiff's wife, said Carrie E. Nelson, was

thereby stunned, bruised, wounded and injured and she then and thereby suffered a broken bone in the right ankle and then and thereby the tendons, muscles and ligaments of said right foot, ankle and leg of the said Carrie E. Nelson were wrenched, twisted, bruised, sprained and torn away; that the said Carrie E. Nelson then and thereby suffered injuries of an internal nature and she also received therefrom a severe [14] nervous shock and thereby became and still is sick and sore and permanently injured and disabled; that said Carrie E. Nelson then and thereby suffered and sustained injuries to her right knee joint and then and thereby the ligaments, muscles, tendons and bones of said right knee were bruised, twisted, wrenched and torn, and as a result of the said injury to the said right knee plaintiff sustained and still sustains and suffers from the ailment, disease and condition known as water on the knee, and has been at all times since the date of said injury and now is unable to walk without aid; that she then and thereby suffered great pain in body and mind and was then and thereby thereafter confined to her bed for a period of about nine weeks, and that plaintiff is informed and believes, and therefore alleges the fact to be, that said Carrie E. Nelson will continue to be permanently sick and unable to perform her usual work and duties during the remainder of her lifetime, and thereby the services and help in the home and care of plaintiff's family and the comfort of the society of plaintiff's said wife as aforesaid, ever since said 15th day of June, 1912, have been and for all future time, as plaintiff is in-

formed and believes and therefore alleges, will continue to be lost to plaintiff; and thereby, ever since said injuries, plaintiff has been compelled, and will continue for an indefinite length of time to employ help and hire women and girls to do the work formerly done by his said wife; and plaintiff has been thereby, and during the remainder of the life of his said wife he will be thereby, compelled to watch over her; that plaintiff has been compelled thereby to, and during the life of his said wife will be thereby compelled to provide doctors, medical assistance, medicine and a nurse for her.

V.

That the said injuries to plaintiff's said wife, Carrie E. Nelson, were caused solely by defendant's negligence, and the [15] said injuries resulted directly and proximately from the negligence and from the gross, wanton and reckless carelessness and negligence of said defendant, its agents, servants and employees in charge of and running said train and cars at said time and place, to wit:

1. In placing the travelling bag or other obstruction in the aisle of said car and in a place in said car where passengers and the said Carrie E. Nelson entering or leaving said car would be likely to and must necessarily pass;
2. In allowing to be placed the travelling bag or other obstruction in the aisle of said car of the defendant and thereby obstructing the free ingress and egress of passengers in said car;
3. In placing an obstruction and allowing to be placed an obstruction in a dangerous position, ob-

structing the free passage of passengers and of Carrie E. Nelson to the seats in said car;

4. In allowing the said travelling bag or other obstruction or obstructions to remain in a dangerous position in the aisle of defendant's car and in a place which the defendant knew, or in the exercise of reasonable care should have known, passengers and said Carrie E. Nelson as a passenger would be obliged to pass in order to obtain a seat in said car;

5. In negligently permitting said car, at the time of the injuries of said Carrie E. Nelson, to be and remain so dark that it was difficult to see or observe any obstruction placed in the aisles of said car.

VI.

That the injuries to the said Carrie E. Nelson resulted directly and proximately from the negligence and from the gross, reckless and wanton negligence of the defendant, its agents, servants and employees in charge of and running said car and train [16] at said time.

VII.

That said plaintiff, by reason of said injuries aforesaid, suffered by his wife as aforesaid, has been compelled to pay, lay out and expend, and has paid, laid out and expended and become obligated for and on account of medical attendance of doctors, nurses' hire, drugs and medicines and hired help to do the work and services performed by his said wife prior to her said injuries, the aggregate sum of \$1,500, no part of which has been paid; that by reason of the matters hereinbefore stated, plaintiff has been dam-

aged in the sum of \$51,500, no part of which has been paid.

WHEREFORE plaintiff prays judgment against the defendant for the sum of fifty-one thousand five hundred dollars (\$51,500) and for costs of suit.

FLINT, GRAY & BARKER,
Attorneys for Plaintiff.

State of California,
County of Los Angeles,—ss.

A. H. Nelson, being duly sworn, says: That he is the plaintiff in the foregoing entitled action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

A. H. NELSON.

Subscribed and sworn to before me this 30th day of October, 1913.

[Seal] W. W. WEST,
Notary Public in and for the County of Los Angeles,
State of California. [17]

[Endorsed]: No. —. Dept. —. In the Superior Court of the State of California in and for the County of Los Angeles. A. H. Nelson, Plaintiff, vs. Atchison, Topeka & Santa Fe Railway Company, a Corporation, Defendant. Complaint. Flint, Gray & Barker, Suite 1027 Title Insurance Building, Fifth and Spring Streets, Los Angeles, California, Telephones: Home 10601, Sunset, Main 685, Attorneys for Plaintiff. [18]

*In the Superior Court of the State of California, in
and for the County of San Bernardino.*

A. H. NELSON and CARRIE E. NELSON,
Plaintiffs,

vs.

ATCHISON, TOPEKA AND SANTA FE RAIL-
WAY, a Corporation,
Defendant.

Notice [of Petition for Removal, etc.].

To Messrs. Flint, Gray & Barker, Attorneys for
Plaintiffs.

GENTLEMEN:—YOU WILL PLEASE TAKE
NOTICE that on the 9th day of November, 1912, at
10 o'clock in the forenoon, or as soon thereafter as
counsel can be heard, the defendant, Atchison, To-
peka and Santa Fe Railway Company, a corporation,
will present a petition and bond for the removal of
the above-entitled action from the Superior Court
of the State of California in and for the County of
San Bernardino to the District Court of the United
States for the Southern District of California,
Southern Division, to the said Superior Court of San
Bernardino County, at the courthouse in the City of
San Bernardino, County of San Bernardino, and
State of California, pursuant to the statutes of the
United States in such cases made and provided; and
that copies of said petition and bond are hereto an-
nexed.

Dated November 7, 1912.

U. T. CLOTFELTER,
M. W. REED,
A. H. VAN COTT,
Attorneys for Defendant. [19]

[Endorsed]: No. 12,702. Dept. —. In the Superior Court, State of California, County of San Bernardino. A. H. Nelson, Plaintiff, vs. A. T. & S. F. Ry. Co., Defendant. Notice. E. W. Camp, A. H. Van Cott, U. T. Clotfelter, M. W. Reed, 409 Kerckhoff Building, Los Angeles, Cal., Telephone: Main, 2980, Attorneys for Defendant. [20]

In the Superior Court of the State of California, in and for the County of San Bernardino.

A. H. NELSON,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAILWAY, a Corporation,

Defendant.

Petition for Removal.

To the Honorable the Superior Court of the State of California, in and for the County of San Bernardino.

Your petitioner, The Atchison, Topeka and Santa Fe Railway Company, a corporation, presents this its petition and by it respectfully shows:

I.

That your petitioner is now and was at the time of the commencement of this action, for a long time prior thereto and ever since has been, a corporation organized and existing under and by virtue of the laws of the State of Kansas, having its principal place of business at the city of Topeka, in said State, and is not now and was not at the time of the com-

mencement of this action, and never has been, a corporation organized or incorporated under or by virtue of the laws of the State of California, and was at all of said times a citizen and resident of the State of Kansas, and is not now and was not at any of the times hereinbefore mentioned a citizen or resident of [21] the State of California, but was at all of said times a citizen of the State of Kansas and a nonresident of the State of California;

II.

That A. H. Nelson, the plaintiff in the above-entitled action, was at the time of said accident a citizen and resident of the State of California, and was not at any of said times and is not now a citizen or resident of the State of Kansas, but at all of said times has been and now is a nonresident of said State of Kansas;

III.

That the above-entitled action is a suit of a civil nature brought by the plaintiff to recover a judgment against your petitioner in the sum of Fifty-one Thousand Five Hundred Dollars (\$51,500.00), on account of alleged injuries to Carrie E. Nelson, wife of said plaintiff, caused, according to the allegations of said complaint, by the wrongful and negligent acts of your petitioner on or about the 15th day of June, 1912, in the county of San Bernardino, State of California;

IV.

That the complaint in the above-entitled action was filed on or about the 6th day of November, 1912, and summons was issued thereupon which was served

upon your petitioner in the County of Los Angeles, State of California, on the 7th day of November, 1912; that, according to the laws of the State of California, the time for answering in the above-entitled action has not yet expired, and your petitioner has not [22] answered, demurred or otherwise pleaded to said complaint, or appeared in said suit or action;

V.

That the matter in controversy in the above-entitled suit or action exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars (\$3,000.00);

VI.

That your petitioner herewith presents a good and sufficient bond as provided by the statute in such cases, that it will, within thirty (30) days from the date of the filing of this petition, enter a certified copy of the record in the above-entitled action in the United States District Court, Southern District of California, Southern Division, and that your petitioner will pay all costs that may be awarded by the said District Court if it shall hold that the above-entitled action was wrongfully or improperly removed thereto.

WHEREFORE, your petitioner prays that said bond be accepted and approved; that the above-entitled action be removed into said District Court of the United States pursuant to the statutes of the United States in such cases made and provided; and that this Court proceed no further in this action, except to make the order of removal as prayed for,

accept the bond presented herewith and direct the clerk of this Court to prepare a certified copy of the record in the above-entitled action for entering in the said District Court of the United States. [23]

And your petitioner will ever pray.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

By _____,

_____,

Its Attorneys.

[Endorsed]: No. Dept. in the Superior Court, State of California, County of San Bernardino. A. H. Nelson, Plaintiff, vs. Atchison, Topeka and Santa Fe Ry. Co., Defendant. Petition for Removal. E. W. Camp, A. H. Van Cott, U. T. Clotfelter, M. W. Reed, 409 Kerckhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for Defendant. [24]

*In the Superior Court of the State of California, in
and for the County of San Bernardino.*

A. H. NELSON,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation,
Defendant.

Bond [on Removal].

KNOW ALL MEN BY THESE PRESENTS: That The Atchison, Topeka and Santa Fe Railway Company, a corporation, as principal, and National

Surety Company, a corporation, as surety, are held and firmly bound unto A. H. Nelson, the plaintiff in the above-entitled action, his heirs, executors, administrators, successors or assigns, in the sum of One Thousand Dollars (\$1,000.00), lawful money of the United States, for the payment of which, well and truly to be made, we and each of us bind ourselves, our and each of our successors and assigns, as the case may be, jointly and severally by these presents.

THE CONDITION of this obligation is such that:

WHEREAS, the said The Atchison, Topeka and Santa Fe Railway Company has applied by petition to the Superior Court of the State of California, in and for the County of San Bernardino, for the removal of a certain cause there pending, wherein A. H. Nelson is plaintiff and The Atchison, Topeka and Santa Fe Railway Company is defendant, to the District [25] Court of the United States for the Southern District of the State of California, Southern Division, for further proceedings, on the grounds in said petition set forth, and that all further proceedings in said action in said Superior Court be stayed:

NOW, THEREFORE, if the said The Atchison, Topeka and Santa Fe Railway Company shall within thirty (30) days from and after the date of the filing of said petition, enter in said District Court of the United States a duly certified copy of the record in the above-entitled action, and shall pay or cause to be paid all costs that may be awarded therein by the said District Court of the United

States if said Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise to remain in full force and effect.

Dated, this 5th day of December, 1912.

THE ATCHISON, TOPEKA AND SANTA
FE RAILWAY COMPANY,
By W. H. BREWER,
Its Asst. to Genl. Mngr.,
Principal.

[Seal]

Attest: Signed G. HOLTERHOFF, Jr.,
Its Western Assistant Secretary.

NATIONAL SURETY COMPANY,

[Seal] By CHAS. SEYLER, Jr.,
Its Attorney in Fact,
Surety.

[Endorsed]: No. . . . Dept. . . . in the Superior Court, State of California, County of San Bernardino. A. H. Nelson, Plaintiff, vs. Atchison, Topeka and Santa Fe Ry. Co., Defendant. Bond. E. W. Camp, A. H. Van Cott, U. T. Clotfelter, M. W. Reed, 409 Kerckhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for Defendant.

[26]

*In the Superior Court of the State of California, in
and for the County of San Bernardino.*

A. H. NELSON,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAIL-
WAY COMPANY, a Corporation,

Defendant.

Order for Removal.

The defendant in the above-entitled action having within the time provided by law filed its petition in due form for the removal of said action to the District Court of the United States for the Southern District of California, Southern Division, and having at the same time offered a good and sufficient bond as required by law, and said bond having been approved, and it appearing to the Court that said defendant is entitled to have said cause removed to said District Court of the United States:

NOW, THEREFORE, it is hereby ordered that this action be removed into the District Court of the United States for the Southern District of California, Southern Division, and that all further proceedings in this Court in said action are hereby stayed, and the Clerk of this Court is hereby directed to make a certified copy of the record in said action for entry in the said United States District Court.

Done this 6th day of December, 1912.

BENJAMIN BLEDSOE,
Judge. [27]

[Endorsed]: No. 12,755 Dept. In the Superior Court, State of California, County of San Bernardino. A. H. Nelson, Plaintiff, vs. Atchison, Topeka and Santa Fe Railway Company, Defendant. Order for Removal. E. W. Camp, A. H. Van Cott, U. T. Clotfelter, M. W. Reed, 409 Kerckhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for Defendant.

State of California,
County of San Bernardino,—ss.

I, Charles Post, County Clerk and ex-officio Clerk of the Superior Court of said County, do hereby certify the foregoing to be a full, true and correct copy of the Summons, Complaint, Notice of Motion for Removal, Petition for Removal, Bond and Order for Removal in the case of A. H. Nelson, vs. The Atchison, Topeka and Santa Fe Railway Co., on file in my office, and that I have carefully compared said copy with the original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 2d day of January, 1913.

[Seal]

CHARLES POST,
Clerk.

[Endorsed]: No. 228-Civil. United States District Court, Southern District of California, Southern Division. A. H. Nelson, vs. Atchison, Topeka and Santa Fe Railway Company. Certified Copy of Record on Removal from Superior Court of San Bernardino County. Filed Jan. 3, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [28]

In the United States District Court in and for the Southern District of California, Southern Division.

A. H. NELSON,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation,

Defendant.

Answer.

COMES NOW the defendant, and answering plaintiff's complaint herein, shows to the Court:

I.

The defendant has no knowledge or information sufficient to enable it to answer either or any of the allegations contained in Paragraphs II and III of the said complaint, and basing its denial thereon denies each and every of said allegations.

II.

Answering Paragraph IV of said complaint defendant denies that said plaintiff's wife, Carrie E. Nelson, collided with or fell over any traveling bag or other obstruction which said defendant had negligently or at all placed or allowed to be placed in any part of any car; and denies that any car of said defendant was at any time allowed by [29] said defendant to be or remain in a dark condition; and denies that by reason of the defendant allowing any car to remain in a dark condition it was difficult or impossible for the said Carrie E. Nelson, or anyone, to see or observe any obstruction or traveling

bag in any part of any such car; and denies that by reason of the defendant placing or allowing to be placed any bag or other obstruction in any car, or allowing any car to be or remain in a dark condition, or the said Carrie E. Nelson was thrown or hurled to the floor in any car, or was stunned, or bruised, or wounded, or injured or suffered a broken bone in the right ankle, or suffered any injuries whatever to any part of her body, or suffered, or sustained any disease or ailment, or has been or will at all be unable to walk without aid, or impaired at all in her ability to walk, or suffered pain in body or mind, or was confined to her bed for any period or will be, or continue to be, for any period sick or unable to perform her usual or any work or duties during any period; and denies that by reason of any of the matters set forth in the complaint, or any negligence of the said defendant, the services or help in the home or elsewhere, or care of the plaintiff's family, or the comfort or society of the plaintiff's wife ever have been or will be for any time lost to the plaintiff, or that the plaintiff has been or ever will be compelled to employ help or hire any women or girls, or anyone, to do any work formerly done by his said wife, Carrie E. Nelson, or that said plaintiff has been or ever will be compelled to watch over his said wife, Carrie E. Nelson, or has been or will be compelled to provide any doctor's or medical assistance, or medicine, or nurse for his said wife.

[30]

III.

Defendant denies that any injuries to his said

wife, Carrie E. Nelson, were caused solely or at all by any negligence of said defendant, or resulted directly or proximately, or at all, from any negligence, or gross, or wanton or reckless, or other carelessness or negligence of said defendant, or either or any of its servants, agents, or employees in any manner whatever, or in placing, or leaving, or causing to be placed or left, any traveling bag, or other obstruction in any part of any car; or in allowing to be placed any traveling bag or other obstruction in any part of any car, or thereby obstructing in anywise ingress or egress of passengers in any car; or in placing or allowing to be placed any obstruction in any dangerous or other position in any car, or obstructing the free or any passage of any passenger in any car; or in allowing any traveling bag or other obstruction to be or remain in a dangerous or any position in any part of any car, or in negligently or otherwise permitting any car at any time to be or remain so dark that it was difficult to see or observe any obstruction placed in any part of any car.

IV.

Defendant denies that any injuries set forth in the complaint, or at all, resulted directly or proximately or at all from any negligence of the defendant, or either or any of its agents, or employees, at any time or at all, at any place. [31]

V.

Defendant denies that the plaintiff by reason of any injuries suffered by said wife of said plaintiff, by reason of any of the matters set forth in said

complaint, or any negligent act or omission of said defendant, has been or will be compelled to pay, or lay out, or expend, or become obligated for or on account of medical attendance of doctors, or any attendance, or hire, or drugs, or medicine, or hired help to do any work or services, the aggregate sum of \$1500, or any sum whatever; and denies that by reason of any of the matters set forth in said complaint, or any negligent act or omission of said defendant, said plaintiff has been damaged in the sum of \$51,500, or any sum whatever.

VI.

And defendant further alleges that the injuries, if any suffered by said plaintiff's wife, Carrie E. Nelson, *was* caused solely by the negligence and carelessness of the said plaintiff's wife, Carrie E. Nelson; and that her said carelessness and negligence were the proximate cause of such injuries.

WHEREFORE, the defendant prays judgment that the plaintiff take nothing by his action, and for its costs thereof.

Attorneys for Defendant. [32]

State of California,

County of Los Angeles,—ss.

A. G. Wells, being by me first duly sworn, says that he is an officer, namely, the General Manager of the defendant company named in the foregoing Answer; that he has read said Answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein

stated on information or belief, and that as to those matters he believes it to be true.

A. G. WELLS.

Subscribed and sworn to before me this fifth day of February, A. D. 1913.

[Seal] EDITH M. ASTBURY,
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: No. 228-Civil. In the U. S. District Court, Southern Dist. of Cal., Southern Div. A. H. Nelson, Plaintiff, vs. A. T. & S. F. Ry. Co., Defendant. Answer. Received copy of the within answer Feb. 5, 1913. Flint, Gray & Barker. By T. Abbott. Filed Feb. 6, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. E. W. Camp, A. H. Van Cott, U. T. Clotfelter, M. W. Reed, Paul Burks, 409 Kerckhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for Defendant. [33]

[Order Granting Motion for Leave to File a Supplemental Complaint, etc.]

At a stated term, to wit, the July Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the City of Los Angeles, on Saturday, the twenty-seventh day of September, in the year of our Lord, one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 228-Civil S. D.

A. H. NELSON,

Plaintiff,

vs.

ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY, a Corporation,

Defendant.

Wheaton A. Gray, Esq., appearing as counsel for plaintiff; A. H. Van Cott, Esq., appearing as counsel for defendant; this cause having heretofore been submitted to the Court for its consideration and decision on plaintiff's motion for leave to file supplemental complaint; the Court having duly considered the same and being fully advised in the premises, now announces its conclusions thereon, and it is ordered that plaintiff's said motion for leave to file herein a supplemental complaint be, and the same hereby is granted, to which ruling of the Court, on motion of defendant, exceptions are, by direction of the Court, hereby entered herein; and it is further ordered, on motion of Wheaton A. Gray, Esq., of counsel for defendant, that the Clerk endorse said supplemental complaint as allowed and filed of this day; whereupon, it is stipulated by counsel for the respective parties, in open court, that a bill of exceptions as to the ruling of the Court on said motion for leave to file supplemental complaint may be filed ten (10) days after entry of judgment herein. [34]

[Endorsed]: No. 228-Civil. United States District Court, Southern District of California, Southern Division. A. H. Nelson, Plaintiff, vs. Atchison,

Topeka and Santa Fe Railway Company, a Corporation, Defendant. Copy of Order. Filed Nov. 21, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [35]

UNITED STATES OF AMERICA.

District Court of the United States, Southern District of California, Southern Division.

No. 282-Civil.

A. H. NELSON,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation,

Defendant.

Notice [of Motion for Leave to File Supplemental Complaint].

To the Defendant in the Above-entitled Action and to A. H. Van Cott, Esq., et al., Its Attorneys:

YOU WILL PLEASE TAKE NOTICE that on Tuesday, the 2d day of September, 1913, at 10:30 A. M. of that day, or as soon thereafter as counsel can be heard, at the courtroom of said Court in the city of Los Angeles, County of Los Angeles, State of California, the above-named plaintiff will move the Court for leave to file a supplemental complaint herein, a copy of which said supplemental complaint is hereunto attached.

Said motion will be made and based on the papers hereunto annexed and upon the records and files in

both of said actions herein referred to.

FLINT, GRAY & BARKER,
Attorneys for Plaintiff. [36]

UNITED STATES OF AMERICA.

District Court of the United States, Southern District of California, Southern Division.

No. 282-Civil.

A. H. NELSON,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation,

Defendant.

Supplemental Complaint.

Now comes the plaintiff in the above-entitled action and by leave of Court first had and obtained, files this his supplemental complaint and alleges as follows:

I.

That this action was originally begun in the Superior Court of the State of California, in and for the County of San Bernardino, on or about the 6th day of November, 1912, and summons was on that date duly issued therein and thereafter duly served upon the defendant. That thereafter and within the time allowed by law, such proceedings were had by and on behalf of the defendant that this said cause was, by order of said Superior Court duly made, given and entered therein, removed from said Superior Court to this the District Court of the United

States for the Southern District of California, Southern Division.

II.

That prior to the commencement of this action, the said plaintiff, A. H. Nelson, and Carrie E. Nelson, his wife, as [37] plaintiffs, on or about the 9th day of October, 1912, had commenced and did commence an action against the defendant herein, Atchison, Topeka and Santa Fe Railway Company, in the said Superior Court of the State of California, in and for the County of San Bernardino, by filing a complaint therein which is hereinafter set forth. That on said 9th day of October, 1912, a summons duly issued out of said Superior Court directed to the defendant to appear in said last-named case. Thereafter, service of said summons was duly had upon said defendant in said case, and thereafter such proceedings were had and taken by and on behalf of the defendant that said case was, by order of said Superior Court duly given, made and entered, removed from said Superior Court to this Court, the District Court of the United States for the Southern District of California, Southern Division, said case being numbered in this Court No. 217-Civil. That thereafter the defendant filed an answer in this Court in said case No. 217-Civil, and said last-mentioned case was thereafter duly set down for trial and tried before said District Court and a jury, said trial concluding on or about the 24th day of April, 1913; and said trial resulted in a verdict in favor of the plaintiffs in said case No. 217-Civil, in the sum of \$1,500.00, which verdict was duly and regularly entered and judgment

thereon also duly and regularly entered in said District Court in favor of plaintiffs and against defendant. That the following is a true copy of the pleadings and judgment in said case No. 217-Civil. [38]

*"In the Superior Court of the State of California, in
and for the County of San Bernardino.*

A. H. NELSON and CARRIE E. NELSON,
Plaintiffs,

vs.

ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY, a Corporation,
Defendant.

COMPLAINT.

Come now the plaintiffs and for cause of action against the defendant allege:

I.

That plaintiffs are now and were at all the times mentioned in this complaint husband and wife.

II.

That defendant is, and during all the times herein mentioned has been a corporation duly incorporated and existing and doing business in the county of San Bernardino, and at all of said times owned, controlled and operated a steam railway in the city of San Bernardino and the county of San Bernardino, State of California, together with rolling stock, cars, tracks, engines and other appurtenances thereto, and was at all of said times doing business thereon and therein as a common carrier of passengers for hire.

III.

That on the 15th day of June, 1912, plaintiffs purchased tickets from the ticket agent of the defendant company, and there was issued to said plaintiffs and to each of them by the defendant [39] company tickets entitling said plaintiffs and each of them to passage on the cars of said defendant from the city of San Bernardino to the city of San Jacinto; that the said plaintiffs and each of them paid to the defendant for said tickets the usual, regular and customary fare; that said plaintiffs thereafter, at about 4:15 P. M. of said date, boarded the train of said defendant standing in the railroad depot and yards of said defendant company at San Bernardino, California, and the said plaintiffs then and there, as passengers, entered one of the cars of said defendant then and there in charge of the officers, agents, servants, and employees of the said defendant company; that upon entering the car of the said defendant and in passing down the aisle of the car in order to obtain a seat, said plaintiff Carrie E. Nelson violently collided with and fell over a traveling bag which said defendant had negligently placed and allowed to be placed in the aisle of said car; that said Carrie E. Nelson was thereby violently thrown and hurled to the floor of said car; that said plaintiff Carrie E. Nelson was thereby stunned, bruised, wounded and injured and she then and thereby suffered a broken bone in the right ankle, and then and thereby the tendons, muscles and ligaments of said right foot, ankle and leg of the said Carrie E. Nelson were wrenched, twisted, bruised, sprained and torn away; that the said Carrie

E. Nelson then and thereby suffered injuries [40] of an internal nature and that she also received therefrom a severe nervous shock and thereby became and still is sick and sore and permanently injured and disabled; that said Carrie E. Nelson then and thereby suffered and sustained an injury to her right knee joint and then and thereby bruised, twisted, wrenched and tore the ligaments, muscles, tendons and bones of the said right knee and as a result of the said injury to the said right knee plaintiff sustained and has sustained and suffered from the ailment, disease and condition known as water on the knee and has been at all times since the date of said injury and now is unable to walk without aid; that she then and thereby suffered great pain in body and mind and was then and thereby thereafter confined to her bed for a period of about nine weeks, and that plaintiffs are informed and believe and therefore allege the fact to be that said Carrie E. Nelson will continue to be permanently sick and unable to perform her usual work and duties during the remainder of her lifetime and that she will continue to suffer greatly in body and mind for a long time to come and be compelled to submit to a long course of medical and surgical treatment for her recovery from said injuries.

That the said injuries to the said plaintiff Carrie E. Nelson were caused solely by the defendant's negligence as aforesaid and the said injuries resulted directly and proximately from the gross, wanton and reckless carelessness and negligence of the said defendant, its agents, servants and employees in charge

of and running said train and cars at said time and place, to wit: [41]

1. In placing the traveling bag or other obstruction in the aisle of said car and in a place in said car where passengers and the said Carrie E. Nelson entering or leaving said car were likely to, and must necessarily pass;
2. In allowing to be placed the traveling bag or other obstruction in the aisle of said car of the defendant and thereby obstructing the free ingress and egress of passengers in said car;
3. In placing an obstruction and allowing to be placed an obstruction in a dangerous position obstructing the free passage of passengers and of Carrie E. Nelson to the seats in said car;
4. In allowing the said traveling bag or other obstruction or obstructions to remain in a dangerous position in the aisle of defendant's car, and in a place which the defendant knew plaintiff Carrie E. Nelson would be obliged to pass in order to obtain a seat in said car.

V.

That the injuries to the said plaintiff Carrie E. Nelson resulted directly and proximately from the negligence and from the gross, reckless and wanton negligence of the defendant, its agents, servants and employees in charge of and running said cars at said time; that by reason of the matters hereinbefore stated, plaintiff Carrie E. Nelson has been damaged in the sum of \$50,000, no part of which has been paid.

WHEREFORE, plaintiffs pray judgment against the defendant for the sum of fifty thousand dollars

(\$50,000) and for costs of suit.

FLINT, GRAY & BARKER,
Attorneys for Plaintiffs." [42]

"*In the United States District Court in and for the Southern District of California, Southern Division.*

A. H. NELSON and CARRIE E. NELSON,
Plaintiffs,
vs.

ATCHISON, TOPEKA AND SANTA FE RAIL-WAY COMPANY, a Corporation,
Defendant.

ANSWER.

Comes now the defendant and answering the complaint herein shows to the Court as follows:

I.

The defendant has no knowledge or information sufficient to enable it to answer paragraph I of said complaint, and basing its denial thereon denies the whole of said paragraph.

II.

Defendant denies that upon entering the car of the defendant mentioned in said complaint, or any car, or at all, or passing down the aisle of said car, the plaintiff, Carrie E. Nelson, violently, or at all, collided, or fell over any traveling bag or anything which said defendant had negligently or at all placed or allowed to be placed in the aisle of such car, and denies that the said Carrie E. Nelson was by reason of falling over any traveling bag, or anything which

said defendant had negligently or at all placed or allowed to be placed in the aisle of any such car, violently or at all thrown or hurled to [43] the floor of such car; and denies that said plaintiff, Carrie E. Nelson, was by reason of colliding with or falling over any traveling bag or anything which said defendant had negligently or at all placed or allowed to be placed in the aisle of any car, stunned, bruised, or wounded or injured, or suffered any broken bone, or any injury whatever, or suffered any internal injuries whatever, or received any nervous shock, or became or is sick or sore or permanently injured or disabled; or suffered any ailment, disease or condition known as water on the knee, or any disease, or has been at any time unable to walk without aid, or at all, or suffered great or any pain in body or mind, or was confined to her bed for any period of time, or will continue to be permanently or at all sick or unable to perform her usual or any work or duties for any period of time, or will suffer greatly in body or mind or at all for any period of time, or be compelled to submit to any course of surgical or medical treatment before her recovery from any injuries.

III.

Defendant denies that any injuries to the plaintiff Carrie E. Nelson were caused solely or at all by any negligence of the defendant set forth in the complaint or otherwise; and denies that any injuries to said plaintiff resulted directly or proximately or at all from the gross, wanton or reckless or any carelessness or negligence or any carelessness or negligence of the defendant, or any or either of its servants,

agents or employees; and denies that any injuries to said plaintiff were caused solely or at all by reason of the defendant placing any bag or any obstruction in any aisle of any car [44] or in any place in any car; or in allowing to be placed any traveling bag or any obstruction in any part of any car, or thereby obstructing the free or any ingress or egress of any passenger in any car; or in placing any obstruction in any car, or in allowing to be placed any obstruction in any position obstructing the free or any passage of any passenger, or of the said plaintiff Carrie E. Nelson, to any seat in any car; or in allowing any traveling bag or thing or obstruction to remain in any position in any aisle of any car, or in any place of any car.

IV.

Defendant denies that any injury or injuries to the said plaintiff, Carrie E. Nelson, resulted directly or proximately, or at all, from any negligence, or gross, or reckless, or wanton negligence of the defendant, or its agents, or servants, or employees, or either or any of its agents, or servants, or employees, in charge of or running any car at the said or any time; and denies that by reason of any of the matters set forth in the said complaint, or of any act or omission of the defendant, the said plaintiff, Carrie E. Nelson, has been damaged in the sum of \$50,000, or in any sum whatever.

V.

And defendant further alleges that the injuries, if any, suffered by the said plaintiff, Carrie E. Nelson, were caused solely by her carelessness and negli-

gence; and that her said carelessness and negligence were the proximate cause of such injuries.

WHEREFORE, The defendant prays judgment that the plaintiffs take nothing by this action, and that it have its costs in said action.

A. H. VAN COTT,
Attorney for Defendant.” [45]

“UNITED STATES OF AMERICA.

District Court of the United States, Southern District of California, Southern Division.

No. 217-Civil.

A. H. NELSON and CARRIE E. NELSON,
Plaintiffs,

vs.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation,
Defendant.

This cause having come on regularly for trial on the 17th day of April, 1913, being a day in the January Term, A. D. 1913, of the District Court of the United States for the Southern District of California, Southern Division, before the Court and a Jury of twelve (12) men duly impanelled; Wheaton A. Gray, Esq., and R. B. Turnbull, Esq., appearing as counsel for plaintiffs, and A. H. Van Cott, Esq., and Paul Burke, Esq., appearing as counsel for Defendant, and the trial having been proceeded with on the 17th, 18th, 21st, 22d, 23d and 24th days of April, 1913, and witnesses having been sworn and examined and documentary evidence having been introduced

on behalf of the respective parties, and the evidence having been closed, and the cause, after argument by counsel for the respective parties and the instructions of the Court, having, on said 24th day of April, 1913, been submitted to the Jury, and the Jury thereafter, on said 24th day of April, 1913, having rendered the following Verdict:

'In the District Court of the United States, for the Southern District of California, Southern Division.

No. 217-Civil.

A. H. NELSON and CARRIE E. NELSON,
Plaintiffs,

vs.

ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY,

Defendant.

We, the jury in [46] the above-entitled cause, find in favor of the plaintiffs, in the sum of \$1500.00.

Los Angeles, April 24th, 1913.

JOSEPH F. HUSTON,
Foreman.'

—and the Court having ordered that judgment be entered herein in accordance with said verdict, in favor of the plaintiffs and against the defendant in the sum of Fifteen Hundred (\$1500.00) Dollars;

NOW, THEREFORE, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court, that A. H. Nelson and Carrie E. Nelson, plaintiffs herein, have and recover of and from the Atchison, Topeka and Santa Fe Railway Com-

pany, a corporation, defendant herein, the sum of Fifteen Hundred (\$1500.00) Dollars, together with the costs and disbursements of said plaintiffs in this behalf taxed at \$54.90/100.

Judgment entered April 24th, 1913.

WM. M. VAN DYKE,

Clerk.

By C. E. Scott,

Deputy Clerk."

III.

That said answer was filed by defendant within the time allowed by law and the stipulation of the parties. That upon the trial of said action No. 217-Civil, evidence was introduced upon all the issues made by said complaint and answer and evidence was also introduced upon said trial to establish all the allegations of paragraph V of the complaint herein, which included evidence to establish the last or fifth allegation of said paragraph V. The issue whether defendant negligently permitted its said car, at the time of the injury to said Carrie E. Nelson, to be and remain so dark that it was difficult to see or observe any obstruction placed in the aisles of said car, was treated as having been made in case No. 217-Civil by the pleadings therein, and evidence for and against said allegation was introduced by the several parties to said suit [47] without objection on either side. Also upon said trial of case No. 217-Civil, paragraph V of defendant's answer was treated by both parties as a sufficient plea and the allegations thereof as constituting a sufficient defense of contributory negligence on the part of the plaintiffs in said case, and

evidence for and against said allegation and defense of contributory negligence was introduced by the respective parties to said action without objection, and said case was tried in all respects as if said plea and defense of contributory negligence on the part of plaintiffs had been properly set up in said answer.

IV.

That upon said trial of case No. 217-Civil, the issues with respect to whether or not the plaintiffs therein were negligent were precisely the same as the issues with respect to the negligence of plaintiff herein in this case, and depended for their determination upon exactly the same evidence, and the same evidence was introduced upon the trial thereof as would be used and be depended upon in respect to that same issue of negligence were said issue to be tried again in this action. That the issues with respect to the contributory negligence of the plaintiff were the same in the action No. 217-Civil and depended for their determination upon the same evidence, and the same evidence was used in the trial of said case No. 217-Civil as would necessarily be used in that same issue of contributory negligence as framed in this action by the pleadings herein. That the same car, the same persons and parties, the same date, the same traveling bag or other obstructions and the same acts with respect to whether said plaintiff was negligent, or whether the defendant was negligent, and as to whose negligence caused the injury resulting to the plaintiff Carrie E. Nelson, are each and all [48] involved in each and both of said actions.

V.

That said judgment in said action No. 217-Civil was duly entered in the above-entitled court on the 24th day of April, 1913, and subsequently and before the verification and filing of this supplemental complaint the defendant in said action No. 217-Civil and in this action did pay to plaintiffs in said action No. 217-Civil the amount of said judgment and said judgment was thereupon and prior to the verification and filing of this supplemental complaint, satisfied by said plaintiffs, and said judgment has become and is final and conclusive between each and all of the parties in said action No. 217-Civil.

VI.

Plaintiff herein therefore sets up the judgment-roll in the said action No. 217-Civil as *res adjudicata* as conclusive upon and as an estoppel in respect to all issues in this case concerning the negligence of the respective parties hereto, and the operation and effect of the negligence of either or any of said parties as a proximate or producing cause of the injuries complained of herein, and avers that upon the strength of said judgment hereinabove pleaded, the Court should adjudicate and determine, upon the strength of that judgment alone, that the defendant herein was guilty of the negligence complained of in the complaint and that said negligence of said defendant was the proximate cause of the injuries referred to and complained of in the complaint herein, and that the plaintiff A. H. Nelson, was not guilty of any want of ordinary care or negligence which contributed to the said injuries of his wife.

WHEREFORE, plaintiff prays that it may be held and adjudged by this Court as above indicated.

FLINT, GRAY & BARKER,
Attorneys for Plaintiff. [49]

United States of America,
Southern District of California,
Southern Division,
County of Los Angeles,—ss.

L. W. Jutten, being duly sworn, says: That he is a member of the firm of Flint, Gray & Barker, attorneys for plaintiff in the above-entitled action; that the said plaintiff does not reside in the county of Los Angeles, but is absent therefrom and resides in the county of San Bernardino, State of California; that said firm of attorneys have, and said L. W. Jutten has, offices in the said county of Los Angeles and not elsewhere, for which reason affiant verifies this complaint on behalf of said plaintiff; that affiant has read the foregoing Supplemental Complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true.

L. W. JUTTEN.

Subscribed and sworn to before me this 22d day
August, A. D. 1913.

[Seal] DAISY ROBERTS,
Notary Public in and for the County of Los An-
geles, State of California.

[Endorsed]: No. 228-Civil. United States District Court, Southern District of California, South-

ern Division. A. H. Nelson, Complainant, vs. Atchison, Topeka & Santa Fe Railway Company, a Corporation, Defendant. Notice and Supplemental Complaint. Filed Aug. 22, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Service of the within Notice and Sup. Comp. is hereby admitted this 22d day of August, 1913. U. T. Clotfelter, A. H. Van Cott, M. W. Reed, Attorneys for Defendant. Flint, [50] Gray & Barker, Equitable Bank Building, First and Spring Sts., Los Angeles, Cal., Main 685, Home 10601, Solicitors for Plaintiff. Allowed and filed September 27, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [51]

In the District Court of the United States, Southern District of California, Southern Division.

A. H. NELSON,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

Defendant.

Demurrer to Supplemental Complaint.

Comes now the defendant and demurs to the supplemental complaint filed by the plaintiff herein by leave of Court, upon the ground that the said supplemental complaint does not state facts sufficient to

constitute cause of action.

U. T. CLOTFELTER,
M. W. REED,
A. H. VAN COTT,
Attorneys for Defendant.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

A. H. VAN COTT,
Attorney for Defendant.

[Endorsed]: No. 228-Civil. Dept. —. In the U. S. Dist. Court, Southern Dist. of Cal., So. Div. A. H. Nelson, Plaintiff, vs. The A. T.-S. F. Ry. Co., a Corp., Defendant. Demurrer to Supplemental Complaint. Filed Oct. 7, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Received copy of the within demurrer this 7 day of Oct., 1913. Flint, Gray & [52] Barker, Attorneys for Plaintiff. E. W. Camp, U. T. Clotfelter, A. H. Van Cott, M. W. Reed, Paul Burks, 409 Kerckhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for Defendant. [53]

[Order Overruling Demurrer to Supplemental Complaint, etc.]

At a stated term, to wit, the July Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court-room thereof, in the city of Los Angeles, on Monday, the twentieth day of October, in the year of our Lord one thousand nine hundred and

thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

No. 228-Civil S. D.

A. H. NELSON,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation,
Defendant.

This cause coming on this day to be heard on defendant's demurrer to plaintiff's supplemental complaint, Wheaton A. Gray, Esq., appearing as counsel for plaintiff, Paul Burks, Esq., appearing as counsel for defendant, now, with the consent of Paul Burks, Esq., of counsel for defendant, it is ordered that the demurrer of defendant to plaintiff's supplemental complaint be, and the same hereby is overruled, the right being reserved to defendant to withdraw said consent and move to have this order vacated within ten (10) days, defendant, however, to answer said supplemental complaint within ten (10) days, if this order be not so vacated.

[Endorsed]: No. 228-Civil. United States District Court, Southern District of California, Southern Division. A. H. Nelson, Plaintiff, vs. The Atchison, Topeka & Santa Fe Railway Company, a Corporation, Defendant. Copy of Order. Filed Nov. 21, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [54]

UNITED STATES OF AMERICA.

District Court of the United States, Southern District of California, Southern Division.

No. 282-Civil.

A. H. NELSON,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY, a Corporation,
Defendant.**Answer to Supplemental Complaint.**

Comes now the defendant, The Atchison, Topeka and Santa Fe Railway Company, a Corporation, and answering the supplemental complaint herein shows to the Court as follows:

Answering paragraph VI of said complaint the defendant denies that the judgment-roll in action No. 217-Civil or any other action is *res adjudicata* or conclusive upon or an estoppel in respect to all or any issues in this case concerning the negligence of either of the parties hereto, or the operation or effect of negligence of either or any of said parties as proximate or producing or any cause of any injuries complained of herein, and denies that upon the strength of the said or any judgment the Court should adjudicate or determine upon the strength of said judgment alone, or at all, that the defendant herein was guilty of the negligence complained of in the complaint or any negligence, or that said negligence of said defendant was the proximate or any cause of any injuries referred to or complained

of in the complaint herein, or at all, or that the plaintiff, A. H. Nelson, [55] was not guilty of any want of ordinary care or negligence which contributed to the said or any injuries of his wife.

WHEREFORE, defendant prays that the plaintiff have no relief and take nothing by the said supplemental complaint.

U. T. CLOTFELTER,
M. W. REED,
A. H. VAN COTT,
Attorneys for Defendant.

State of California,
County of Los Angeles,—ss.

A. G. Wells, being by me first duly sworn, says that he is an officer, namely, the General Manager of The Atchison, Topeka & Santa Fe Railway Co., named in the foregoing answer; that he has read said answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and that as to those matters he believes it to be true.

A. G. WELLS.

Subscribed and sworn to before me this 5th day of November, A. D. 1913.

[Seal] C. N. STEDMAN,
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: No. 228—Civil. In the District Court of the United States, in and for the Southern District of California, Southern Division. A. H. Nelson, Plaintiff v. The Atchison, Topeka and Santa Fe Railway Company, a Corporation, Defendant.

Answer to Supplemental Complaint. Filed Nov. 5, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Received copy of the within Nov. 5, 1913, Flint, Gray & Barker, By Zelia Walker. E. W. Camp, A. H. Van Cott, U. T. Clotfelter, M. W. Reed, Paul Burks, 409 Kerckhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for Defendant. [56]

[Verdict.]

In the District Court of the United States, for the Southern District of California, Southern Division.

No. 228-Civil.

A. H. NELSON,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation,

Defendant.

We, the Jury in the above-entitled cause, find in favor of the plaintiff, in the sum of \$4,000.00.

Los Angeles, California, November 20th, 1913.

H. N. WELLS,

Foreman.

[Endorsed]: 228—Civil. U. S. District Court, Southern District of Calif., Southern Division. A. H. Nelson vs. A. T. & S. F. Ry. Co. Verdict. Filed November 21, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [57]

[Judgment.]

UNITED STATES OF AMERICA.

District Court of the United States, Southern District of California, Southern Division.

No. 228-Civil.

A. H. NELSON,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation,

Defendant.

This cause having come on regularly for trial on the 19th day of November, 1913, being a day in the July Term, A. D. 1913, of the District Court of the United States for the Southern District of California, Southern Division, before the Court and a jury of twelve (12) men impanelled; Wheaton A. Gray, Esq., appearing as counsel for plaintiff, and A. H. Van Cott, Esq., appearing as counsel for defendant; and the trial having been proceeded with on the 19th, and 20th days of November, 1913, and witnesses having been sworn and examined and documentary evidence having been introduced on behalf of the plaintiff, and the evidence having been closed, and the cause, after argument by counsel for the respective parties and the instructions of the Court, having, on said 20th day of November, 1913, been submitted to the Jury, and the Jury, thereafter, on the 21st day of November, 1913, having rendered the following Verdict:

*"In the District Court of the United States, for the
Southern District of California, Southern Di-
vision.*

No. 228-Civil.

A. H. NELSON,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAIL-
WAY COMPANY, a Corporation,

We, the jury in the above-entitled cause, find in
favor of the plaintiff, in the sum of \$4,000.

Los Angeles, California, November 20th, 1913.

H. N. WELLS, [58]
Foreman."

NOW, THEREFORE, by virtue of the law and by
reason of the premises aforesaid, it is considered by
the Court, that A. H. Nelson, plaintiff herein, have
and recover of and from the Atchison, Topeka and
Santa Fe Railway Company, a Corporation, defendant
herein, the sum of \$4,000.00, together with the
costs and disbursements of said plaintiff, in this be-
half taxed at \$83.30.

Judgment entered November 21st, 1913.

WM. M. VAN DYKE,
Clerk.

By C. E. Scott,
Deputy Clerk.

[Endorsed]: No. 228—Civil. United States Dis-
trict Court, Southern District of California, South-
ern Division. A. H. Nelson, Plaintiff, vs. Atchison,
Topeka and Santa Fe Railway Company, a Corpora-

tion, Defendant. (Copy of) Judgment. Filed Nov. 21, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [59]

[Certificate of Clerk U. S. District Court to Judgment and Judgment-roll.]

In the District Court of the United States, for the Southern District of California, Southern Division.

No. 228-Civil.

A. H. NELSON,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation,

Defendant.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing to be a true copy of the Judgment entered in the above-entitled action, and recorded in Judgment Book No. 2 of said Court, for the Southern Division, at page 235 thereof, and I further certify that the foregoing papers hereto annexed, constitute the judgment-roll in said action.

Attest my hand and the seal of said District Court, this 21st day of November, A. D. 1913.

[Seal]

WM. M. VAN DYKE,

Clerk.

By C. E. Scott,
Deputy Clerk.

[Endorsed]: No. 228-Civil. In the District Court of the United States for the Southern District of California, Southern Division. A. H. Nelson, vs. Atchison, Topeka and Santa Fe Railway Co., a Corp. Judgment-roll. Filed November 21, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. Recorded Judg. Register Book No. 2, page 235. [60]

In the District Court of the United States of America, Southern District of California, Southern Division.

A. H. NELSON,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation,
Defendant.

Bill of Exceptions.

BE IT REMEMBERED that on the 19th day of November, 1913, this action came on regularly for trial before the Honorable F. H. Rudkin, Judge, Gray, Barker and Bowen, Esqs., appearing for plaintiff and U. T. Clotfelter, M. W. Reed and A. H. Van Cott, Esqs., appearing for defendant, and a jury having been regularly impaneled and sworn, plaintiff introduced certain testimony tending to prove the amount of damages claimed to have been suffered by him by reason of the injuries claimed to have been inflicted upon his wife.

Exception No. I.

And thereafter counsel for plaintiff offered in evidence the judgment-roll in the case of A. H. Nelson and Carrie E. Nelson vs. The Atchison, Topeka and Santa Fe Railway Company, a corporation, being case No. 217, Civil, in this court, being the pleadings and judgment whereof copies are attached to and made a part of plaintiff's supplemental complaint herein, for the purpose, and counsel for plaintiff stated that said evidence was offered to show that the injury received by Mrs. Nelson was the proximate and direct result of the negligence of the defendant and in no way to be [61] attributed to her own negligence; and that said evidence was offered as conclusive upon the question of the liability of the defendant on this injury. To which offer and evidence defendant, by its counsel objected on the ground that such evidence was incompetent, irrelevant and immaterial, on the ground that the judgment in the case between the husband and wife and the railway company is not *res judicata* in an action by the husband for his expenses and loss of services. Which objection was overruled, to which ruling defendant then and there excepted.

Exception No. II.

And thereupon the said judgment-roll was read to the jury, and the plaintiff rested his case, and thereupon Mr. Van Cott, on behalf of the defendant, moved for a non-suit on the ground that the plaintiff had produced no competent evidence of any negligence on the part of the defendant or of freedom from contributory negligence on the part of Mrs.

Carrie E. Nelson, the plaintiff's wife. Which motion was denied, and to this ruling the defendant then and there excepted.

Exception No. III.

And thereupon the defendant rested and moved the Court to direct a verdict in favor of the defendant; which motion the Court denied; and to which ruling the defendant then and there excepted. [62]

Exception No. IV.

And thereupon the Court instructed the jury among other things as follows:

“Gentlemen of the jury, you are instructed that the judgment in the case of A. H. Nelson and Carrie E. Nelson, plaintiffs, vs. Atchison, Topeka and Santa Fe Railway Company, a corporation, defendant, No. 217-Civil, in this Court, on the 24th day of April, 1913, is conclusive on the use of due care on the part of the plaintiff's wife, and that the negligence of the defendant was the proximate cause of the injury to plaintiff's wife and to plaintiff, in the case now on trial, and therefore, you are instructed that your verdict must be in favor of the plaintiff in this case in some amount.”

To which instruction the defendant then and there excepted.

Dated at Los Angeles, California, this 5th day of December, 1913.

Respectfully submitted,
U. T. CLOTFELTER,
M. W. REED,
A. H. VAN COTT,
Attorneys for Defendant. [63]

[Stipulation as to Bill of Exceptions.]

It is hereby stipulated and agreed that the foregoing is a full, true and correct bill of exceptions in the above-entitled action and that the same may be settled, allowed and filed.

Dated at Los Angeles, California, this 12th day of December, 1913.

FLINT, GRAY & BARKER,
Attorneys for Plaintiff.
U. T. CLOTFELTER,
M. W. REED,
A. H. VAN COTT,
Attorneys for Defendant.

[Order Settling and Allowing Bill of Exceptions.]

The foregoing bill of exceptions is hereby settled, allowed and ordered to be filed.

Dated at Los Angeles, California, this 12 day of December, 1913.

FRANK H. RUDKIN,
Judge.

[Endorsed]: No. 228-Civil. In the District Court of the United States, Sou. Dist. of Calif., Southern Division. A. H. Nelson, Plaintiff, vs. The Atchison, Topeka & Santa Fe Ry. Co., a Corporation, Defendant. Bill of Exceptions. Filed Dec. 12, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. E. W. Camp, A. H. Van Cott, U. T. Clotfelter, M. W. Reed, Paul Burks, 409 Kerckhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for Defendant. [64]

In the District Court of the United States of America, Southern District of California, Southern Division.

A. H. NELSON,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation,
Defendant.

Assignment of Errors.

COMES NOW the defendant, Atchison, Topeka and Santa Fe Railway Company, a corporation, and files the following assignment of errors upon which it will rely upon its prosecution of the writ of error in the above-entitled cause, petition for which writ it files at the same time with this assignment.

I.

The said Court erred in receiving in evidence the judgment-roll in the case of A. H. Nelson and Carrie E. Nelson, vs. The Atchison, Topeka and Santa Fe Railway Company, a corporation, being Case No. 217-Civil, in this Court, being the pleadings and judgment whereof copies are attached to and made a part of plaintiff's supplemental complaint.

II.

The said Court erred in denying the defendant's motion for a nonsuit, made by it at the close of the plaintiff's case. [65]

III.

The said Court erred in denying the defendant's

motion that said Court direct a verdict against the plaintiff and in favor of defendant, made by it at the close of all the evidence in the case.

IV.

The said Court erred in instructing the jury as follows:

“Gentlemen of the jury, this is a civil action by the husband to recover damages for loss resulting to him personally from an accident suffered by his wife while a passenger on a railroad train, as appears from the testimony, a former action was brought by the husband and wife against the railroad company and in that action a judgment of \$1500 was recovered for the injury suffered by the wife. That judgment is conclusive upon you both as to the damages sustained by the wife in that accident and as to the negligence of the defendant company and the lack of contributory negligence on the part of the wife. In other words, you are instructed that the judgment in the case of A. H. Nelson and Carrie E. Nelson, plaintiffs, vs. Atchison, Topeka and Santa Fe Railway Company, a corporation, defendant, No. 217-Civil, in this Court, on the 24th day of April, 1913, is conclusive on the use of due care on the part of the plaintiff’s wife, and that the negligence of the defendant was the proximate cause of the injury to plaintiff’s wife and to plaintiff, in the case now on trial, and therefore, you are instructed that [66] your verdict must be in favor of the plaintiff in this case.”

V.

The said Court erred in instructing the jury as follows:

“The judgment referred to in the last instruction settles the question of the liability of the defendant to the plaintiff in some amount of damages, and the only question left for you to determine is the amount of such damages, and you should, in your verdict, compensate the plaintiff for such pecuniary loss as he has suffered by reason of the injuries received by his wife; and in fixing his damages you should take into account all moneys necessarily expended in medical care and attention for his wife, incurred by reason of her injuries mentioned in the complaint, and he is also entitled to compensation for any pecuniary loss on account of being deprived of the services of his said wife in his household, in the way of cooking, housekeeping and caring for and taking care of said plaintiff and the minor children of said plaintiff and his said wife, in caring for the home in which said family lives, including any services performed by her in the matter of cooking for employees and hired men of her husband, together with any loss or impairment of the comfort and society of plaintiff’s wife to him, occasioned by her said injuries. In your verdict, you may also reimburse him for any pecuniary loss caused or necessitated by said injuries to his wife, in the employment of help to do the work formerly done by his said wife, as well as for any loss of time in his own [67] work and attention to his business by himself personally, caused directly by his wife’s injuries.”

And upon the foregoing assignment of errors and upon the record in said cause, the defendant prays that said judgment and verdict may be reversed.

Dated February 16, 1914.

U. T. CLOTFELTER,

M. W. REED,

A. H. VAN COTT,

Attorneys for Defendant.

[Endorsed]: No. 228-Civil. In the U. S. District Court, Southern Dist. of Cal., Southern Div. A. H. Nelson, Plaintiff, vs. A. T. & S. F. Ry. Co., a Corp., Defendant. Assignment of Errors. Filed February 17, 1914. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. E. W. Camp, A. H. Van Cott, U. T. Clotfelter, M. W. Reed, Paul Burks, 409 Kerckhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for [68]

In the District Court of the United States of America, Southern District of California, Southern Division.

A. H. NELSON,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation,
Defendant.

Petition for Writ of Error.

The Atchison, Topeka and Santa Fe Railway Company, a corporation, defendant in the above-entitled cause, feeling itself aggrieved by the

verdict of the jury and judgment entered on the twenty-first day of November, 1913, comes now by U. T. Clotfelter, M. W. Reed and A. H. Van Cott, its attorneys, and files herewith an assignment of errors, and petitions said Court for an order allowing said defendant to procure a writ of error to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated February 16, 1914.

U. T. CLOTFELTER,

M. W. REED,

A. H. VAN COTT,

Attorneys for Defendant. [69]

[Endorsed]: No. 228-Civil. In the U. S. District Court, Southern Dist. of Cal., Southern Div. A. H. Nelson, Plaintiff, vs. A. T. & S. F. Ry. Co., a Corp., Defendant. Petition for Writ of Error. Filed February 17, 1914. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. E. W. Camp, A. H. Van Cott, U. T. Clotfelter, M. W. Reed, Paul Burks, 409 Kerckhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for Defendant.

[70]

In the District Court of the United States of America, Southern District of California, Southern Division.

A. H. NELSON,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE,
, RAILWAY COMPANY, a Corporation,
Defendant.

Order Allowing Writ of Error.

Upon motion of U. T. Clotfelter, M. W. Reed, and A. H. Van Cott, attorneys for defendant, and upon filing a petition for a writ of error and an assignment of errors,—

IT IS ORDERED that a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the verdict and judgment heretofore entered herein.

Dated February 17, 1914.

OLIN WELLBORN,

Judge.

[Endorsed]: No. 228-Civil. In the U. S. District Court, Southern Dist. of Cal., Southern Div. A. H. Nelson, Plaintiff, vs. A. T. & S. F. Ry. Co., a Corp., Defendant. Order Allowing Writ of Error. Filed February 17, 1914. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. E. W. Camp, A. H. Van Cott, U. T. Clotfelter, M. W. Reed, Paul Burks, 409 Kerckhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for Defendant. [71]

In the District Court of the United States of America, Southern District of California, Southern Division.

A. H. NELSON,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation,
Defendant.

Order Staying Proceedings.

The defendant, Atchison, Topeka and Santa Fe Railway Company, a corporation, having this day filed its petition for a writ of error from the verdict and judgment made and entered herein to the United States Circuit Court of Appeals, in and for the Ninth Judicial Circuit, together with an assignment of errors, within due time, and also praying that an order be made fixing the amount of security which defendant should give and furnish upon said writ of error, and that upon the giving of said security all further proceedings of this Court be suspended and stayed until the determination of said writ of error by the said United States Circuit Court of Appeals, and said petition having this day been duly allowed;

NOW, THEREFORE, it is ordered that upon the said defendant filing with the clerk of this court a good and sufficient bond in the sum of Six Thousand Dollars (\$6,000), to the effect that if the said defendant and plaintiff in error shall prosecute the said writ of error with effect, and answer all damages and costs if it fails to make its plea good, then

the said obligation to be void, else to [72] remain in full force and virtue, the said bond to be approved by the Court, that all further proceedings in this court be and they are hereby suspended and stayed until the determination of said writ of error, by said United States Circuit Court of Appeals.

Dated February 17, 1914.

OLIN WELLBORN,
Judge.

[Endorsed]: No. 228-Civil. In the U. S. District Court, Southern Dist, of Cal., Southern Div. A. H. Nelson, Plaintiff, vs. A. T. & S. F. Ry. Co., a Corp., Defendant. Order Staying Proceedings. Filed February 17, 1914. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. E. W. Camp, A. H. Van Cott, U. T. Clotfelter, M. W. Reed, Paul Burks, 409 Kerckhoff Building, Los Angeles, Cal.. Telephone Main 2980, Attorneys for Defendants. [73]

In the District Court of the United States of America, Southern District of California, Southern Division.

A. H. NELSON,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation,
Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That we, The Atchison, Topeka and Santa Fe Rail-

way Company, a corporation, as principal, and National Surety Company, a corporation, as surety, are held and firmly bound unto A. H. Nelson, plaintiff above named, in the sum of Six Thousand Dollars (\$6,000) to be paid to said A. H. Nelson, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated the sixteenth day of February, 1914.

WHEREAS, the above-named defendant, the Atchison, Topeka and Sante Fe Railway Company, a corporation, has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment in the above-entitled cause by the District Court of the United States, for the Southern District of California, [74] Southern Division, rendered and entered in the said cause on the twenty-first day of November, 1913;

NOW, THEREFORE, the condition of this obligation is such that if the above-named, The Atchison, Topeka and Santa Fe Railway Company, shall prosecute the said writ with effect, and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

Dated February 16, 1914.

THE ATCHISON, TOPEKA AND SANTA
FE RAILWAY COMPANY.

By W. H. BREWER,
Its Assistant to General Manager.

[Seal] Attest:

G. HOLTERHOFF, Jr.,

Its Western Assistant Secretary.

[Seal] NATIONAL SURETY COMPANY,

By H. F. STEWART,

Its Resident Vice-president.

Attest: H. EVERETT CHARLTON,

Resident Assistant Secretary.

Approved this 17th day of February, 1914.

OLIN WELLBORN,

Judge. [75]

**Affidavit, Acknowledgment, and Justification by
Guaranty or Surety Company.**

State of California,

County of Los Angeles,—ss.

On this sixteenth day of February, one thousand nine hundred and fourteen, before me personally came H. F. Stewart, known to me to be the Resident Vice-president of the National Surety Company, the corporation described in and which executed the within and foregoing Bond of Atchison, Topeka and Santa Fe Railway Company, a Corp., as a surety thereon, and who, being by me duly sworn, did de- pose and say that he resides in the City of Los Angeles, State of California; that he is the Resident Vice-president of said Company, and knows the corporate seal thereof; that the said National Surety Company is duly and legally incorporated under the laws of the State of New York; that said Company has complied with the provisions of the Act of Congress of August 13th, 1894, that the seal affixed to the within bond of Atchison, Topeka and Santa Fe

Railway Company, a Corp., is the corporate seal of said National Surety Company, and was thereto affixed by order and authority of the Board of Directors of said Company, and that he signed his name thereto by like order and authority as Resident Vice-president of said Company, and that he is acquainted with H. Everett Charlton and knows him to be the Resident Assistant Secretary of said Company; and that the signature of said H. Everett Charlton, subscribed to said Bond is in the genuine handwriting of said H. Everett Charlton, and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, unencumbered and liable to execution exceed its debts and liabilities of every nature whatsoever, by more than the sum of Twelve Thousand Dollars.

That Frank L. Gilbert is our agent to acknowledge service [76] in the Judicial District wherein this bond is given.

H. F. STEWART.

(Deponent's signature.)

Sworn to, acknowledged before me, and subscribed in my presence this sixteenth day of February, 1914.

[Seal]

HAZEL JONES,

(Officer's signature, description and seal.)

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: No. 228-Civil. In the United States District Court, Southern District of California, Southern Division. A. H. Nelson, Plaintiff, vs. The Atchison, Topeka and Santa Fe Ry. Co., Defend-

ant. Bond. Filed February 17, 1914. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. E. W. Camp, A. H. Van Cott, U. T. Clotfelter, M. W. Reed, Paul Burks, 409 Kerckhoff Building, Los Angeles, Cal., Telephone Main 2980, Attorneys for Defendant. [77]

[Certificate of Clerk U. S. District Court to Transcript of Record.]

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

No. 228-Civil.

A. H. NELSON,

Plaintiff,

vs.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, a Corporation,

Defendant.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing seventy-seven (77) typewritten pages, numbered from 1 to 77 inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the pleadings, and of all papers and proceedings upon which the judgment in favor of the plaintiff was made and entered in said cause, and also of the bill of exceptions, assignment of errors, petition for writ of error, order allowing writ of error, order staying proceedings, and bond on writ of error, in

the above and therein entitled cause, and that the same together constitute the return to the annexed writ of error;

I do further certify that the cost of the foregoing record [78] is \$32.05, the amount whereof has been paid to me by The Atchison, Topeka and Santa Fe Railway Company, a corporation, the plaintiff in error in said cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 14th day of April, in the year of our Lord, one thousand nine hundred and fourteen, and of our Independence the one hundred and thirty-eighth.

[Seal] WM. M. VAN DYKE,
Clerk of the District Court of the United States, in
and for the Southern District of California.

[79]

[Endorsed]: No. 2406. United States Circuit Court of Appeals for the Ninth Circuit. The Atchison, Topeka and Santa Fe Railway Company, a Corporation, Plaintiff in Error, vs. A. H. Nelson, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Southern District of California, Southern Division.

Received and filed April 16, 1914.
FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

[Order Enlarging Time to May 1, 1914, to File Record Thereof and to Docket Cause in Appellate Court.]

In the United States Circuit Court of Appeals for the Ninth Circuit.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,

Plaintiff in Error,

vs.

A. H. NELSON,

Defendant in Error.

Good cause appearing therefor, it is hereby ordered that the time heretofore allowed said plaintiff in error to docket said cause and file the record thereof, with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, be, and the same hereby is, enlarged and extended to and including the 1st day of May, 1914.

Dated at San Diego, California, March 10th, 1914.

OLIN WELLBORN,

United States District Judge, Southern District of California.

[Endorsed]: No. 2406. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to May 1, 1914, to File Record Thereof and to Docket Case. Filed Mar. 11, 1914. F. D. Monckton, Clerk. Referred Apr. 16, 1914. F. D. Monckton, Clerk.

